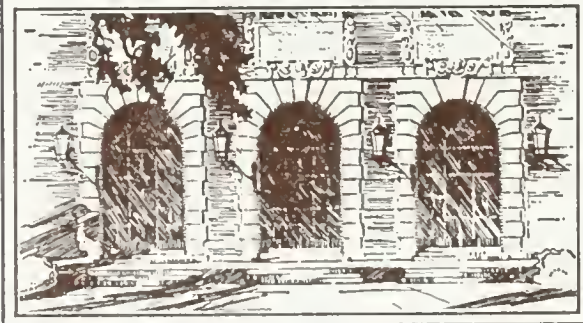


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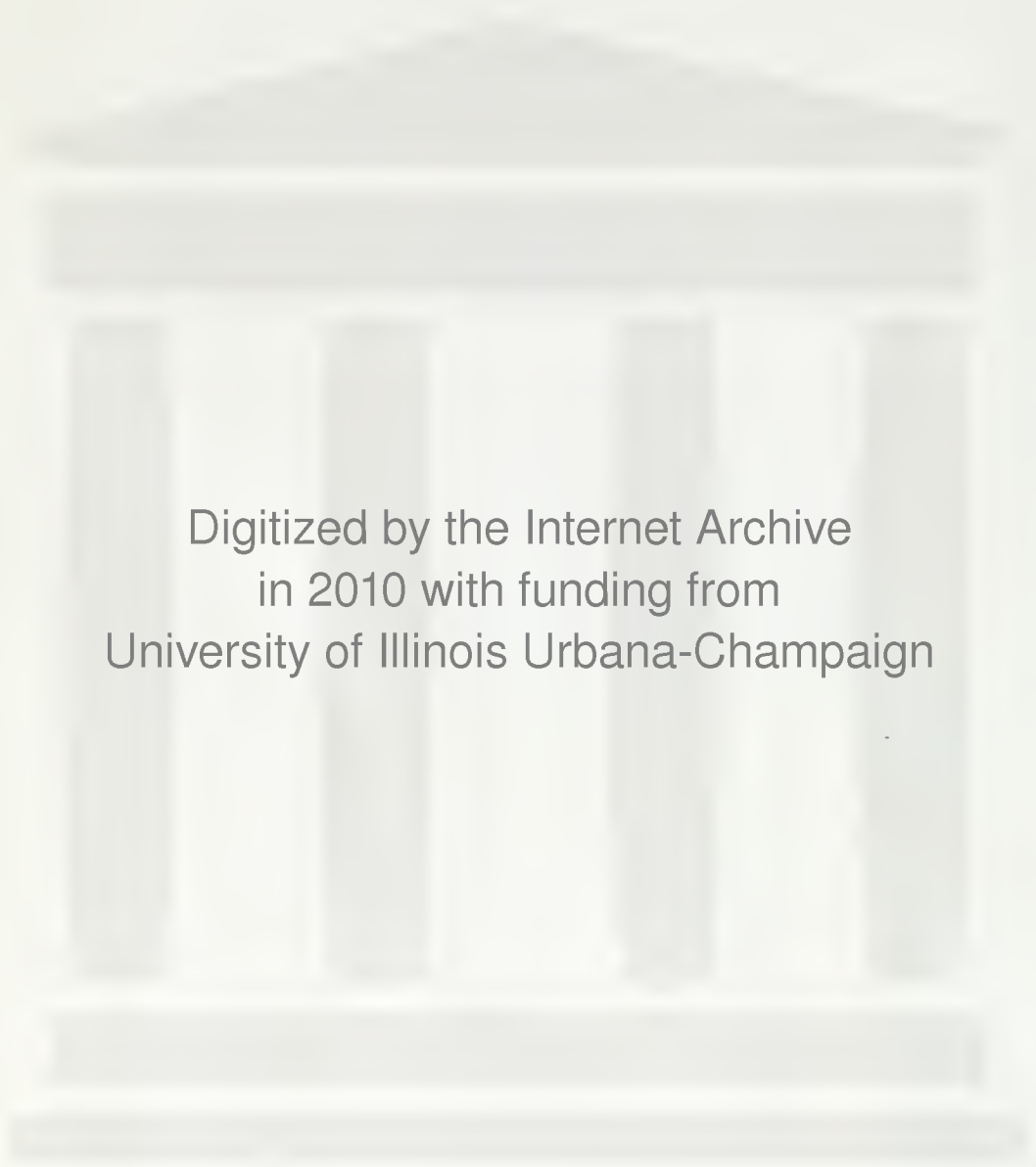
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HOUSING REHABILITATION: RESTRAINTS, PROSPECTS, POLICIES

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HOUSING REHABILITATION:

RESTRAINTS, PROSPECTS, POLICIES

by

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Introduction

In 1962 former HUD secretary, Robert C. Weaver, stated that "rehabilitation is crucial for the revitalization of our urban areas and that rehabilitation will work because it has to work" (204). To date, however, the record of rehabilitation has been disappointing (19, 95). This bibliography examines why this has occurred and what can be done to correct this situation. It is divided into four sections:

Section One examines what is meant by rehabilitation and explores the promise and performance of this housing strategy. Section Two focuses on the restraints to rehabilitation while Section Three explores different strategies for forcing, encouraging and facilitating rehabilitation. Section Four lists sources that have either specifically discussed rehabilitation or have explored areas which directly effect the rehabilitation process such as housing code enforcement and governmental property and income taxation.

Section One

Rehabilitation: Definition and Promise and Performance

Rehabilitation: Definition (64)

Confusion has often resulted because the term rehabilitation has tended to be used interchangeably with redevelopment. Actually, the two terms are entirely different (207). Redevelopment, which involves demolition and new construction, is generally effected in those areas of extensive blight in which rehabilitation is deemed inadequate to stem neighborhood decay (203).

There have been many definitions of rehabilitation. H.N. Osgood and A.H. Zwerner have defined it as the elimination of environmental and structural deficiencies which if not adequately and timely corrected would result in neighborhood blight (126). J. Michael Warren sees it simply as the renewal and modernization of existing buildings (203). Other definitions have viewed it as making a run down uninhabitable building habitable; (69) the extensive rebuilding of a property to remove decayed or worn-out parts, complete installation of modern mechanical services and floor plans and rebuilding within the shell; (207) residential rebuilding to present obsolescence or diminishing utility and to restore safe, sound and sanitary standards; (63) and as the upgrading of a property ranging from the elimination of code violations to the complete remodeling or redesigning of floor layouts, and the replacement of major mechanical and structural components (95).

Levels of Rehabilitation

Many different levels of rehabilitation have been delineated. The New York State Temporary State Housing Rent Commission (117) differentiated between four levels-code compliance, minimal rehabilitation, modernization and remodeling.¹ Others have differentiated

¹These were defined as follows: Code Compliance - such work as is necessary to restore the structure to safe and sanitary maintenance and repair. In general, this means the building would be in compliance with all building, housing, fire, and sanitary codes of the City, and the landlord would be providing all customary services in accordance with rent control requirements. Minimal Rehabilitation - in addition to all work called for under code compliance, modest measures to upgrade the housing would include improvement in the outside appearance of the building and an increase in electrical capacity within the apartments. Modernization - in addition to the work of minimal rehabilitation, outmoded mechanical equipment and fixtures would be replaced and all public areas of the building would be redecorated. No change in floor plans is included. Remodeling - floor layouts would be functionally rearranged to produce a larger number of separate apartments than presently exist. Outmoded mechanical equipment would be replaced and the interior and exterior of the building would also be cleaned and painted as with modernization.

among minimal, moderate and extensive rehabilitation (88).²

Rehabilitation: An Historical Overview

Rehabilitation has long been expoused as a housing strategy offering significant benefits as compared to either demolishing slum structures or constructing new housing. A 1938 Harvard Study by Mabel Walker (202) promoted rehabilitation as a crucial strategy to eliminate slums.³ In 1953, the President's Committee on Government Housing Policies and Programs recommended that while federally aided demolition and new construction programs were appropriate in neighborhoods that were beyond recall, "federally aided rehabilitation programs would be more appropriate in neighborhoods that weren't badly blighted (192)."

In the 1960's the growing advocacy for rehabilitation properties in slum areas resulted largely from disenchantment with the federal urban renewal programs (103). The latter, established by the 1949 Housing Act, had until the early 1960's focused almost entirely on aiding redevelopment rather than rehabilitation (7, 32). This almost exclusive emphasis on demolition and new construction was criticized by scores of urbanologists for making it more difficult for low income groups to obtain housing and for having

²These were defined as follows: Minimal rehabilitation - elimination of code violations and/or minor repairs, improving the facade of the building, and other cosmetic treatment. Moderate rehabilitation - all of the above work plus minor changes in the layout, general interior and exterior repairs, modernization of heating, plumbing and electrical systems, and replacement of outmoded fixtures. Extensive rehabilitation - complete remodeling or redesigning of layouts (including gutting and installation of elevators in some cases), major interior and exterior repairs, installation of new heating, plumbing and electrical systems, and replacement of outmoded fixtures.

³For an analysis of the Walker Study and other early influential rehabilitation studies such as the Goodwillie analysis of the Waverly rehabilitation project (Arthur Goodwillie, (for the Home Loan Bank Board) Waverly - A Study of Neighborhood Conservation Washington, D.C.: 1940) and the Boston City Planning Board rehabilitation analyses (Boston City Planning Board, Building a Better Boston, Boston: 1941; A Progress Report on Reconstruction, Boston: 1943; and A Progress Report on Reconditioning, Boston: 1946) see (108).

undesirable racial overtones (1,7,41,51,52,78,208). Rehabilitation was now being hailed as the optimal policy for revitalizing inner city neighborhoods.

The federal government enacted numerous programs to encourage rehabilitation in the 1960s. The 1961 Housing Act established the 203k-220h programs which insured loans made by private lenders to property owners who made major improvements. The 1964 and 1965 Housing Acts established the 312 and 115 programs which made available to property owners in urban renewal and other areas long-term, low-interest loans for rehabilitation. The 1968 Housing Act also established a number of low-interest long-term mortgage programs. (For a description of these programs see 169,176 and Exhibit 1-1).

Rehabilitation: Promise (154,155)

To the proponents of rehabilitation its virtues were almost boundless. Because it would either obviate relocation or entail only temporary relocation, rehabilitation would minimize family and community displacement and would thereby reduce the neighborhood opposition that often arose when urban renewal was planned (53). Rehabilitation was also viewed as a strategy that could disperse low-income housing units throughout a number of neighborhoods, rather than concentrating such units in a single area (186). Rehabilitation, regarded as easier, quicker and cheaper than clearance and new construction (39), was also considered particularly well suited for training inner city residents in construction skills (131). Furthermore, from the perspective of the municipality, there was no hiatus during which property taxes were not paid as there had been in urban renewal. And in addition to these social goals rehabilitation was also viewed as being a profitable endeavour for construction, building material and other corporations (56,69,108,114,142,172,199,200).

Rehabilitation: Performance

In practice, however, not all of the anticipated benefits of rehabilitation have been realized. For example, rehabilitation has often caused relocation problems for, except for cosmetic rehabilitation, most improvements can be easily effected only after the original tenants or homeowners have moved to other quarters (158).

Rental increases after rehabilitation has been completed have also caused problems of relocation. A study of the Rapid Rehabilitation Demonstration Program (RRDP) in New York City concluded that these projects resulted in rent increases (18,77) that forced many of the original tenants to move. And this situation was not atypical, but occurred in other rehabilitation efforts (203).

Exhibit 1-1

MAJOR GOVERNMENTAL REHABILITATION PROGRAMS

Programs	Legislative Origin	Description ¹
Title I Home Improvement	1934 National Housing Act	Insures loans made by private lenders to property owners who make home improvements in either single or multifamily dwellings.
Title I Urban Renewal Rehabilitation	1949 Housing Act as Amended 1954	Compensates either two-thirds or three-quarters of the eligible project costs incurred by the local public agency administering an urban renewal rehabilitation program. Eligible project costs include public improvements, surveying properties, and planning and implementing a code enforcement program.
203k-220h	1961 Housing Act	Insures loans made by private lenders to property owners who make major improvements. Maximum loan amounts are \$12,000 per family unit (\$17,400 in high cost areas) with a term from 5 to 20 years with a 7.5 percent interest rate. The 203k and 220h programs differ only in that the latter can be used only in urban renewal areas.
312, 115 Programs	The 312 and 115 programs were established by the 1964 and 1965 Housing Acts respectively	Both programs can be used only by owners of properties in urban renewal or intensive code enforcement areas; or by owners of properties deemed uninsurable because of physical hazards after an inspection by a state FAIR plan. The 115 program grants up to \$3,500 to owner occupants with incomes of \$3,000 or less. Under the 312 program owner occupants of properties can obtain a \$12,000 loan per dwelling unit (\$17,400 in high cost areas) at a 3 percent interest rate and a maximum 20 year term.

¹It should be noted that the mortgage terms, interest rates and other details of the described programs are constantly being modified by both Congressional action and HUD administrative decisions.

Exhibit 1-1 (Continued)

MAJOR GOVERNMENTAL REHABILITATION PROGRAMS

Programs	Legislative Origin	Description
235	1968 Housing Act	<p>The 235 program provides interest subsidies on loans to families with incomes not exceeding 135 percent of the limits prescribed for admission to local public housing for the purchase of new, existing or substantially rehabilitated houses. A federal interest subsidy reduces the effective mortgage interest rate paid by the moderate-income mortgagor to as low as one percent, but the mortgagor must pay 20 percent of his adjusted income for the mortgage payments.</p>
221h-235j	<p>The 221h and 235j programs were established by the Demonstration Cities and Metropolitan Development Act of 1966 and the 1968 Housing Act respectively. The 221h program has been phased out and has been replaced by the almost identical 235j program.</p>	<p>Direct below-market interest rate loans are made to nonprofit sponsors for purchasing and rehabilitating properties. The properties are then sold to families with the same income limits as in the 235 program who can obtain long term (up to 40 years) mortgages with an interest rate as low as one percent.</p>
221d3-236	<p>The 221d3 and 236 programs were established by the 1961 and 1968 Housing Act respectively.</p>	<p>Nonprofit or limited profit sponsors can obtain long term (up to 40 years) low interest rate mortgages (as low as one percent) for rehabilitating multifamily housing to house moderate income families.</p>
502, 504 Rural Housing Loans	Title V of the 1949 Housing Act.	Both provide below market interest rate loans for the purchase or improvement of rural homes.

As a consequence of causing relocation problems, rehabilitation efforts have often been opposed by residents in the rehabilitation neighborhood (86,122). In addition and partially as a consequence of frequent neighborhood opposition rehabilitation has also often proven to be unprofitable (15,28,121). And even the extensive rehabilitation of units with antiquated floor plans and inherent structural deficiencies has frequently not succeeded in transforming such properties into desirable places to live (76,77).

Cost Savings

While rehabilitation has sometimes not had all its purported advantages it has frequently been an advantageous housing strategy. Rehabilitation has been cheaper than new constructions in the SECD (South End Community Development Inc.), a rehabilitation effort in Boston; in CHIP (Camden Housing Improvement Projects), a rehabilitation project in Camden; in rehabilitation projects sponsored by the Kate Mearns Foundation and in numerous other rehabilitation efforts (39,95,181,193).

Rehabilitation has not always been cheaper than new construction. For example, the RRDP in New York City had a project cost estimated at either \$49 (HUD estimate) or \$53 (Institute of Public Administration estimate) (77,184) per useable square foot - more than double the square foot costs of comparable new construction. The RRDP effort, however, was atypical in that rehabilitation was effected in 48 hours and labor overtime, crane rental, and off site assembly costs were considerably higher than on other rehabilitation efforts. Overall, however, even extensive rehabilitation has generally been less expensive than comparable new construction.

Time Savings

Rehabilitation has also generally required less time than new construction. The Boston Rehabilitation Program (BURP) rehabilitated approximately 2,000 dwellings in less than a year, whereas the demolition of 2,000 existing units and their replacement by a like number of new units would have taken at least twice as long (86). In CHIP, rehabilitation takes approximately ten weeks from commencement to completion, which is far shorter than the time span needed for new construction (95).

Other Benefits

Unlike a new construction project which entails the construction of new site improvements such as streets and sewers, a rehabilitation project can maintain existing site improvements. Furthermore, as noted earlier, there is no interruption in property taxes during rehabilitation as there is in urban renewal redevelopment. Although rehabilitation has not realized all the advantages attributed to it, it does offer numerous advantages over new construction. It is an especially important strategy in "gray areas" where an expeditious housing program is often crucial to prevent such neighborhoods from deteriorating into slums.

Volume

Despite the many governmental programs to encourage rehabilitation, the volume of rehabilitation has often been inadequate to the need. In 1969 HUD projected that two million subsidized rehabilitated units would be needed in the ten year period from fiscal year 1969 until fiscal year 1978 (177). A year later HUD revised its projection for needed future rehabilitation activity from two million subsidized units in the 1969-1978 period to one million (181). This downward revision was made because of the high cost of rehabilitation due to increased construction costs.

Actual rehabilitation volume has fallen far short of HUD's 1969 rehabilitation objectives and has generally fallen short of even the lower 1970 HUD projections of needed rehabilitation volume (95,182). The next section examines the reasons why the rehabilitation volume has often been so disappointing.

Section Two

Restraints to Rehabilitation: Financing, Acquiring Suitable Properties, Problems of Management and Maintenance, and Other Restraints.

There are many restraints to rehabilitating properties for moderate income families. Not only has it been difficult to obtain financing for such rehabilitation, but it has frequently been difficult to acquire properties for rehabilitation expeditiously and cheaply. Another major problem has been the frustration and expense of managing and maintaining the properties after rehabilitation has been completed. This section addresses itself to examining these three major restraints, as well as lesser restraints.

FinancingProblems in Obtaining Conventional Financing

Many rehabilitation efforts have experienced problems in obtaining conventional (nongovernmental guaranteed or subsidized) financing (9,22,84,108,135,161). A study of the Queens Village Rehabilitation effort (QVI) in Philadelphia noted that none of the problems that were encountered were as difficult or crucial as the difficulty in obtaining financing. The financing problems of QVI are highlighted in the following description (122):

We (QVI) asked Union Federal Savings and Loan to be the mortgage lender for these four houses. This is the company that took the mortgage on the first house we sold which had a conventional rather than an FHA insured mortgage. Union Federal inspected the area for the first time and because of what they saw refused to make any further loans.

We next went to Fidelity Bank and Mortgage Company and Harry Glazer, their vice-president, offered to make the mortgages but couldn't make the interim loan to us for construction purposes as they weren't in this business. He suggested First Federal Savings and Loan Association.

First Federal Savings and Loan Association tentatively agreed to make both the permanent loan and the construction loan but only on the condition that FHA give us a firm builders' commitment. (The) FHA stated that it wasn't their policy to make firm builders' commitments to an organization like ours. This eliminated First Federal as a source for an interim loan which would make it impossible for us to build the house.

We then went to Frankfort Trust Co. which specialized in construction loans, but they would consider making such loans only if First Federal made a formal agreement to take the permanent mortgage. First Federal reluctantly agreed but put a 120 day limitation on its agreement which in effect nullified its offer.

Furthermore, even when rehabilitation sponsors have been able to obtain conventional financing, it has often consisted of short-term, low loan to value ratio, high-interest mortgages. The lack of long-term, low-interest mortgages for rehabilitation in many urban neighborhoods has often made moderate income rehabilitation in such areas unfeasible because prevailing high financing costs necessitate high rentals.

Problems with Governmental Financing Programs

Although existing governmental financing programs (see Exhibit 1-1) have alleviated the problem of financing moderate income rehabilitation, they have not completely eliminated the difficulties because in many instances statutory loan limits have been unrealistic; the FHA mortgage interest rates have not been competitive; the processing of the FHA rehabilitation mortgages has often been time-consuming and costly; and geographical and other restrictions limit when and where one can obtain a rehabilitation loan.

Unrealistic Statutory Limitations and Expensive and Time Consuming Mortgage Processing

Many FHA rehabilitation programs impose unrealistic statutory limits on the per-unit mortgage that can be granted (195). In other instances private lenders have been unwilling to make rehabilitation loans even though these loans were insured by the FHA, because the maximum loan interest rates allowed by the FHA were noncompetitive (187). Scores of authors have criticized the FHA rehabilitation programs as being almost totally ineffectual because of the omni-present expense and delay in their processing (96,116,209).

Geographical and Other Restrictions

The geographical restrictions imposed by federal funding programs have also impeded the usefulness of some rehabilitation programs. The 115 grants and 312 loans, for example, are made only in urban renewal or code enforcement areas.

Restrictions on refinancing have also limited the usefulness of certain governmental rehabilitation programs. (Refinancing is important because it limits rent increases after rehabilitation (88). And certain rehabilitation programs such as the Title I and 203k-220h programs may be inappropriate for either the purchase or rental of rehabilitated properties by low income families because of their high financing cost.

Acquiring Properties for Rehabilitation

Property Acquisition Problems: Overview

The problem of acquiring properties to be rehabilitated, has hampered many rehabilitation efforts, especially the large-scale projects. Builder-developer James Rouse has noted that rehabilitation could be effective only on a massive scale and that such large-scale rehabilitation was constantly being frustrated because there were no means of acquiring sufficient properties (191). However, the problems encountered by large-scale projects have tended to overshadow the fact that even comparatively small rehabilitation efforts have had difficulty in obtaining properties (209).

Property Acquisition Problems: Specifics

Properties for rehabilitation are obtainable both from the private market and from government agencies. Purchase from private sources is frequently more expedient because it can be effected either by directly approaching an owner or through the services of a realtor. Private acquisition however, is beset by a myriad of problems.

Locating and Negotiating with Owners

Locating and subsequently negotiating with owners of many inner city properties, especially of abandoned structures, can frequently be frustrating (209). The difficulties stem from inaccurate or outdated city records and from lack of owner cooperation.

Some inner city properties are characterized by many changes in ownership (185). Often the municipal records of property ownership are either inaccurate or out of date. In such cases, the purchase is contingent upon an expensive private title search. Even in cases where the municipal records are correct and updated, many owners of inner city properties are wary of being contacted because their properties may be debt-ridden or in violation of building or health codes.

High Property Cost

The cost of the properties desired by rehabilitation sponsors has often been prohibitive (178). The high property prices are often attributable to urban renewal itself or to the competition of middle-class families interested in renovating row houses or brownstones (209).

Delinquent Taxes and Clearing Title

Even if an owner can be located and a reasonable purchase price agreed upon, a large amount of back taxes may make the rehabilitation of the property economically unfeasible (14). A rehabilitation sponsor can negotiate with the local taxing authority to reduce or eliminate the tax delinquency, but such a reduction will not always be granted; nor is it legally possible in some jurisdictions to forgive the entire amount of back taxes.

Back taxes and tax liens are related to another problem of acquiring properties - obtaining clear title to the property. If there are delinquent taxes, a tax lien, which is a first lien superceding all other encumbrances will be placed on the property. Legal questions of the exact status of "straw-man" ownership may further complicate the transfer of strong title. Furthermore, the presence of second and third mortgages on many inner city properties also complicates title transfer.

Obtaining clear title is imperative if a rehabilitation sponsor wishes to obtain an FHA-insured mortgage. The FHA will insure a mortgage only if its lien is the first and best lien on a property. Consequently, if the sponsor has questionable title on a property, the FHA will frequently refuse to grant him a mortgage to rehabilitate the property.

LPA Condemnation and Writedown

Theoretically, properties for rehabilitation could be acquired by a local public agency (LPA) utilizing its power of eminent domain. An LPA is an official body empowered to contact the federal government for assistance in carrying out urban renewal projects; it may be either a governmental entity, such as a municipality, or a separate body, such as a redevelopment or housing authority.

Having designated an area as an urban renewal site, an LPA can use its power of eminent domain to acquire properties for resale at a reduced cost to a rehabilitation developer. Under the federal Title I Urban Renewal Program such as LPA land writedown is considered an eligible project cost and as such can be compensated by the federal government.

Few LPA's, however, have actually purchased properties and written down their cost for resale to rehabilitation sponsors. There are two reasons for this: their commitment to redevelopment rather than rehabilitation and their doubts about the legality of the writedown (95,193,203).

Buying City-Owned Properties

Another possible strategy is for the rehabilitation sponsor to purchase municipally owned property. Not all such properties, are suitable for rehabilitation, however. Some may have been abandoned and vandalized to the extent that rehabilitation would be extremely expensive. Or the property's size whether extremely large or small may mitigate against rehabilitation. Rehabilitation may further be contraindicated in a building whose antiquated design served the minimal housing standards of the past, e.g. the floor plan of a New York City old law tenement. And some of the city-owned properties may be slated for demolition because of urban renewal projects or highway construction (206).

Buying and Foreclosing Tax Liens

A rehabilitation sponsor could also purchase tax liens, sold periodically by a municipality in cases of delinquent property taxes, and subsequently foreclose these liens. Or the municipality could foreclose these liens and then offer to sell the foreclosed properties to rehabilitation sponsors. These strategies, however often involve a considerable delay before clear title is obtained. In addition, the costs of foreclosure may be prohibitive. And, in some jurisdictions there may be doubts about the strength of the title thereby acquired (11,62,85,92,95).

Managing and Maintaining the Rehabilitated Properties

Another major restraint to rehabilitation in many urban areas is the problem of managing and maintaining rehabilitated properties. The specific problems encountered are discussed below.

Rent Delinquencies and Vandalism

Rehabilitation projects have often been characterized by rent delinquencies (118). Internal and external vandalism has also been a serious problem as attested by the widespread vandalism of rehabilitated properties in the South Bronx, Boston, Detroit and other urban areas (120,139).

Repair-Prone Properties and Lack of Repairmen

Unless the interior is gutted and mechanical systems are completely replaced, the maintenance of a rehabilitated older building may be expensive (209). Compounding these maintenance problems is the national dearth of repairmen. Inner city areas suffer most because repairmen are reluctant to come to certain urban neighborhoods, or will come only in teams for security purposes which often makes the cost of their services prohibitive (161).

Expense of Maintaining Scattered Properties and Landlord-Tenant Racial Differences

In most rehabilitation projects the spatial scattering of rehabilitated properties increases the difficulty and expense in managing them because routine tasks, such as collecting rents consume a great deal of time (209). Problems of managing and maintaining rehabilitated properties are further, often exacerbated by racial antipathy between sponsor and tenants. The sponsor may view tenants as irresponsible and incorrigible, and they, in turn, may regard the sponsor as a "heartless slum lord." Such an acrimonious atmosphere poses a definite obstacle to the management and maintenance of rehabilitated properties.

Attracting Contractors

In addition to the three major restraints financing, acquiring properties and managing and maintaining properties that have been described, other restraints have also impeded rehabilitation. Attracting experienced rehabilitation contractors, for example, has frequently been frustrating. This difficulty stems from a number of reasons.

Reluctance to Work in Urban Neighborhoods

Many contractors are reluctant to work in urban neighborhoods because they must contend with the nuisance of keeping their trucks locked at all times to avoid the theft of tools and construction materials. The omnipresent fear for their own personal safety in these rundown neighborhoods also contributes to contractors' reluctance. And attractive construction opportunities in the suburbs compete for the contractor's attention.

FHA Profit Restrictions and Paper Work

FHA profit restrictions and paper work may also deter contractors from working on FHA-insured rehabilitation projects (178). Another impediment is the greater amount of contractor paper work usually required on an FHA project compared to a regular construction effort. Furthermore, delay in an FHA inspection may also delay payment to the contractor.

Surety Bonds

Those minority group contractors who are willing to engage in rehabilitation projects despite FHA profit restrictions and other drawbacks may be prevented from doing so because of their difficulty in obtaining a surety bond. Since all HUD-assisted contracts require that the general contractor be bonded, this is a serious obstacle (179).

Obtaining Insurance

Another restraint to urban rehabilitation has been the difficulty of obtaining fire and vandalism insurance for the renovated properties. When rehabilitation sponsors have been able to obtain insurance they often have been forced to pay exorbitant premiums (178). The adoption of the FAIR (FAIR access to Insurance Requirements) program in 1968 which was designed to alleviate urban fire insurance problems has largely alleviated the insurance difficulties confronting rehabilitation sponsors. But even with the FAIR plan, problems still remain (95).

Community Opposition

Potential sponsors may be wary of rehabilitating properties in many urban neighborhoods because of the past experience of many rehabilitation sponsors with neighborhood hostility and opposition (86,87). Neighborhood opposition to a rehabilitation sponsor may be an expression of racial and social differences. Or it may be a protest against relocation problems created by the rehabilitation program. In most instances, it would be prohibitively expensive if not physically impossible to rehabilitate an occupied building especially if extensive rehabilitation is attempted. Tenants have often been forced to leave to seek housing with lower rentals than those on the rehabilitated properties. The difficulties attendant upon forced relocation often cause neighborhood animosity (122).

Tax Considerations

An owner may be deterred from rehabilitating his property because of the prospect that the restored property will be reassessed with a consequent property tax increase (66,162). (Empirical studies corroborate the relationship between rehabilitation and raised property taxes (162,203). In addition, some critics have charged that federal tax and depreciation policies encourage cosmetic repairs rather than rehabilitation since expenses for the former are immediately deductible as operating expenses for tax purposes whereas rehabilitation expenditures are not (43,70,71, 157). However, because of the many restraints to rehabilitation this tax differentiation has probably not appreciably discouraged investment in rehabilitation (16,95). And because of these restraints it is doubtful whether any revision of tax policies so that rehabilitation expenses were immediately deductible would result in an upsurge in rehabilitation efforts.

Restrictive Building Codes

Inflexible building codes requiring that a building be rehabilitated according to the same construction standards demanded of new construction have been accused of impeding rehabilitation (93). (This contention is disputed by the Columbia Journal of Law and Social Problems (24).

FHA Rehabilitation Standards

The FHA rehabilitation requirements have also been criticized for their excessive stringency (196). These high standards have frequently prevented rehabilitation because in order to meet them in high cost construction areas, e.g., New York City, a developer would have to exceed statutory ceilings on rehabilitation expenditures.

Even in cases in which financing or cost limitations are no problem, property owners or investors may not wish to effect the extensive rehabilitation required by the FHA. A recent study noted that "many owners who would be interested in securing funds for less dramatic rehabilitation shrink away from the level of indenture required to support FHA standards regardless of the interest rate" (161).

* * * * *

Restraints to Residential Rehabilitation: Conclusion

Few rehabilitation efforts have encountered all the problems enumerated in this section, but many projects have been impeded by some of the restraints described. Despite scores of governmental programs to facilitate rehabilitation, this housing strategy has often failed because of the many restraints against its implementation.

Section Three

Strategies to Force, Encourage and Facilitate Rehabilitation

In this section our focus shifts to an examination of strategies to facilitate rehabilitation. We first examine strategies for forcing rehabilitation-effecting an intensive code enforcement program and establishing a receivership program. We then focus on policies for both encouraging rehabilitation - offering tax incentives, improving financing and updating the rehabilitation technology; and, for facilitating rehabilitation - alleviating property acquisition problems and other strategies.

Effecting Intensive Code Enforcement Program

Housing code enforcement is considered an essential spur to rehabilitation because its sanctions provide a "stick" to force landlords to improve their properties. Municipal code enforcement is also expected to bolster an owner's attitude regarding the long term future of the neighborhood, thereby increasing the likelihood that he will rehabilitate his property (108,193). In numerous rehabilitation projects, e.g. Harlem Park in Baltimore, and Wooster Square and Dixwell in New Haven housing code enforcement has proven beneficial in forcing rehabilitation (12,72,103). However, there are scores of obstacles to effecting an intensive code enforcement program.

Obstacles to Intensive Code Enforcement (33)

Legal Questions. (99)

Recent court cases have restricted the use of housing code inspection (57). In Camara v. Municipal Court of the City and County of San Francisco (387 U.S. 523 1967). The United States Supreme Court held that a housing inspection was an intrusion upon an individual's rights to privacy and security, protected by the Fourth Amendment. Except where the householder's permission was forthcoming, the Supreme Court ruled that a search warrant must be obtained before a housing inspection could be made.

Inadequate Sanctions Against Housing Code Violators

Code enforcement programs have often been diluted because court sanctions against violators have been nominal only. Although many jurisdictions provide jail terms for housing code violators, they seldom impose such sentences (57,59). The same laxity prevails in the matter of fines.

Insufficient Inspectors

Code conformity may also be difficult to enforce because of the shortage of housing inspectors (40). The personnel shortage is aggravated by inadequate recruitment of qualified individuals into careers in code enforcement (58).

Owner Reaction to Intensive Code Enforcement

Furthermore, even if an intensive code enforcement program were effectively implemented, the results might be disappointing. Because an enforcement program is not directly aimed at alleviating the many rehabilitation restraints, it may prove ineffective as a strategy for increasing the volume of rehabilitation.

Confronted with an intensive code enforcement program, a property owner can follow a number of strategies (146,147). If he chooses to retain ownership he can evade and delay enforcement, he can repair the property up to code standards, or he can improve it beyond code standards. He can sell the property to a private party. Or he can abandon his property. The effect of intensive code enforcement unfortunately has frequently been to encourage the choice of housing abandonment over the other possible owner strategies (60).

Receivership

If an intensive code enforcement program failed to produce owner repairs, a municipality can petition the courts to appoint a receiver. This receiver would make those repairs necessary to bring the property up to code standards, defraying his costs with the rents he collects from the property.

A number of states, such as New Jersey, Connecticut and Massachusetts, authorize their courts to appoint receivers of properties with serious code violations (55,129,130). However, as with effecting an intensive code enforcement program, implementing a receivership program is also fraught with problems.

Problems in Effecting a Receivership ProgramLack of Private Interest in Assuming Receivership

Lack of private interest stems from the following: although a receiver's expenditures often constitute a first lien on the property's rents or title such a lien is a meaningful security only if either the rental role or the value of the property exceeds or at least approaches the cost of repairs. A cumulative backlog of code violations may necessitate costly repairs far exceeding the rent role or the worth of a property. In such instances, because no private party would be willing to become a receiver, the municipality may be forced to act as a receiver and to absorb the repair costs if it wishes to repair such properties.

Financial and Political Problems of Public Receivership

A public receivership program frequently entails considerable municipal expense. Theoretically, municipal expenditures for code repairs would be recouped from the rental role of the repaired properties. But in practice, municipalities effecting receivership programs, e.g. New York City have often recovered only a small percentage of their expenditures. And, public receivers have often been criticized of spending either too much or too little for repairs and rehabilitation. New York City, for example, was criticized by both those who felt that the extent of rehabilitation should be guided solely by a building's need for rehabilitation and by those who felt that the major concern should be the recoument of costs out of rents within a reasonable time (57).

Offering Tax Incentives for RehabilitationTax Incentives: An Overview

One frequently proposed strategy to encourage rehabilitation is the offering of liberal tax benefits to investors in rehabilitation (83,193). But, such a strategy has often proven to be considerably expensive as well as inequitable.

High Cost of Tax Incentives

In terms of the federal government's loss in revenues, tax incentives to encourage rehabilitation are often more expensive than a comparable program of direct governmental subsidy. The costs of the tax incentive program provided for in Section 167 (K) of the 1969 Tax Act, (offering a five year rapid depreciation for investment in moderate income rehabilitation (82,144) for example, are considerable (95,167).

Tax Incentives: Further Drawbacks

Tax incentive programs to encourage rehabilitation can result in inequities. The federal income tax, which is a progressive tax, is perverted by Section 167 (K) and similar tax provisions (168) which enable high income individuals to prevent their incomes from being taxed at prevailing income tax rates. Furthermore, even the prospect of a tax shelter may be an insufficient incentive for high income individuals to invest in uncertainty-ridden urban rehabilitation.

Improving Rehabilitation FinancingReducing the Time and Expense of Mortgage Processing

Delays in approval of governmental rehabilitation programs could be reduced in the following ways: providing mortgage pre-processing services; simplifying the architectural exhibits needed for approval; and delegating more authority to local bodies, such as local FHA offices.

Preprocessing

In the Harlem Park rehabilitation effort, mortgage processing was facilitated (103) because the Harlem Park staff was instructed by the FHA in preprocessing FHA applications. This procedure freed the property owner from cumbersome paper work and meant that the Harlem Park office could provide a "one-stop" service for property owners interested in rehabilitation. Most property owners interested in rehabilitation, however, do not have access to the preprocessing service that was available in Harlem Park and providing such a service in other neighborhoods would reduce some of the time delays in FHA mortgage processing.

Simplifying the Required Architectural Exhibits and Allowing Performance Standards

On most FHA projects, the sponsor is required to present an extremely detailed series of architectural exhibits. And frequently, protracted negotiations between the FHA's and sponsor's architects increase the time needed for approval as well as the expense. If the FHA were to allow more flexible rehabilitation standards, sponsors would experience less delay and frustration in trying to obtain variances from the FHA rehabilitation standards.

In BURP, and the Philadelphia "used house" rehabilitation program, the FHA allowed comparatively flexible rehabilitation standards (86,175) and this was one reason for the extremely rapid processing time of the BURP rehabilitation mortgages (86,175). However, because the FHA was severely criticized (198) precisely for requiring less detailed rehabilitation standards in BURP and in the Philadelphia "used house" program, it may be unwilling to follow such a procedure in other rehabilitation projects.

Greater Local Autonomy

The processing of FHA mortgages has sometimes been hampered because the lack of authority of local FHA offices has necessitated their constant referral of decisions to regional offices; traditionally the regional office makes the final review of the project feasibility of all mortgage applications submitted through the local office.

In BURP, processing time was shortened, by giving the local FHA office the authority to process the rehabilitation mortgages without regional review (86). However, the FHA may not be willing to standardize this time-saving structure for fear of renewed criticism for laxity.

Updating the Rehabilitation Technology

In his evaluation of potential rehabilitation programs for New York City, Frank Kristof suggested the use of such management devices as PERT (Program Evaluation Research Technique) to facilitate rehabilitation (88). More specifically, others have suggested that rehabilitation costs might be reduced if the following procedures were instituted: systems engineering, prefabrication, off site assembly, standardized operating procedures and utilizing innovative construction materials (30,94).

Systems Engineering (102)

A systems-oriented Critical Path Method construction schedule has been utilized in new construction for a number of years. Such an approach may not be applicable to rehabilitation, however, because of the inherent uncertainties in rehabilitation work. For example, a sponsor is often unable to know exactly what mechanical or structural components need replacement or repair until actual rehabilitation has begun. Furthermore, most rehabilitation has been done by small contractors, who are often unfamiliar with systems engineering. Finally, the cost savings, if any, on a small project with a small contractor may very well be neutralized or negated by the overhead incurred in implementing systems engineering.

Prefabrication and Standardizing the Rehabilitation Procedure

Theoretically, using prefabrication (47,73,74,75,91) and standardizing the rehabilitation procedure should reduce the costs of rehabilitation efforts. Such savings result, however, only if a large number of identical preassembled units can be utilized. But because rehabilitation, is confronted with many variations in house size and floor plan, such prefabrication may be costly (76,77). Similarly, in the opinion of numerous rehabilitation contractors standardizing rehabilitation by replacing or repairing the same components in each house may also be impracticable or extremely costly, because such a strategy ignores the cost saving of using salvagable structural and mechanical building components (86,94).

Innovative Construction Materials

Innovative construction materials have also been suggested as a means of reducing rehabilitation costs and thereby increasing its volume. Among the scores of such in use are: self-studding or

partially pre-assembled wall systems, factory-finished vinyl-covered gypsum board, plastic plumbing, molded stackable plastics and sprayed urethane foam for insulation purposes. However, the use of many of the construction materials mentioned above, may be prohibited by restrictive local building codes and even if allowed may effect only small reductions in the monthly carrying cost of the rehabilitated property (94).

Alleviating Property Acquisition Problems

Adopting a Torrens Title System

The difficulty and expense of clearing title on inner-city properties could be lessened by adopting a Torrens title system. Under this system, the land title itself is registered under government control, rather than the documents or deeds evidencing title (89). The adoption of a Torrens system, however, would not guarantee the elimination of title uncertainties because the system may not be used; jurisdictions that have a Torrens system often use it only infrequently. Its disuse is a result of opposition by both title insurance companies and lawyers, as well as of ignorance on the part of property owners. This opposition may be hard to overcome and its presence reduces the Torrens system to a mere palliative for the problems of clearing title.

Simplifying the Tax Foreclosure Process (95)

Tax-delinquent properties could be acquired more expeditiously if the tax foreclosure process were simplified and shortened. Such streamlining would be especially critical in cases where tax-delinquent buildings have been abandoned because such properties might be quickly vandalized to the extent that rehabilitation would not be economically feasible. Some of the following policies could expedite the foreclosure process: adopting an in rem foreclosure method; and most importantly, adopting one of the proposed model foreclosure laws.

Adopting In Rem Foreclosure and Model Foreclosure Recommendations

One strategy to facilitate foreclosure would be municipal adoption of an in rem foreclosure procedure which would make for cheaper and more expeditious municipal foreclosure of tax-delinquent liens. These foreclosed properties could then be sold to rehabilitation sponsors.

But present in rem procedures, while they can be effected more rapidly than in persona foreclosure, are themselves still often quite time consuming especially for a rehabilitation sponsor desirous of obtaining a property before it will be vandalized. This problem could be alleviated by adopting an in rem procedure which could be effected shortly after taxes have become delinquent; a recommendation to this effect was made in 1935 by the Committee

on a Model Tax Collection Law of the National Municipal League (111). Similarly, adopting the model foreclosure procedure recommended by Walter Fairchild, would also expedite the foreclosure process (44).

Modifying Existing Tax Foreclosure Procedures: Evaluation

Attempts to modify the existing tax foreclosure laws have often been defeated. In Boston, an effort in 1969 to shorten the redemption period of tax-delinquent properties to six months was opposed by real estate interests and was defeated. Frank Kristof proposed that New York State adopt legislation permitting cities to assume title to any building that had been tax delinquent for at least one year, if after notifying the property's owner of the impending foreclosure action, no one had stepped forward to assume responsibility for the structure; his proposal was rejected by the New York State Legislature (150).

Modifying the existing tax foreclosure procedures is analogous to adopting a Torrens title system: rationally, both strategies have merit yet both have been, and in all likelihood will continue to be, opposed by groups benefiting from the existing cumbersome title transfer and tax foreclosure laws.

Alleviating Management and Maintenance Problems

Adopting Sanctions Against Tenant Violations of the Housing Code

Among the several possible strategies to alleviate maintenance problems in rehabilitated properties is municipal adoption of sanctions against tenant violators of the housing code. Tenants currently have few legal repair or maintenance responsibilities in jurisdictions having many multiple dwellings (57). In such jurisdictions, the maintenance problem might be reduced by the "stick" approach of enacting code sanctions against destructive tenants.

However, the enactment of code sanctions may have little effect because such sanctions are rarely enforced. Inadequate enforcement is traceable to several factors, both political and practical. Tenant organizations have growing political clout and intensive enforcement of housing code sanctions against tenant violators of the code may very well be opposed by such organizations. Furthermore, the Camara decision has raised legal obstacles to the inspection of a tenant's apartment for the purpose of housing code enforcement against his will; a likely situation if sanctions against tenant code violators would be enforced.

Establishing Centralized Management and Maintenance Services

To alleviate maintenance problems in inner city areas, former New York senator, Charles Goodell, proposed the establishment of local management corporations. His bill, S-4181 (1970), would have provided federal grants to housing management administrations (HMAs). (S-4181 was not enacted)

The HMA could be either a public or private nonprofit or limited-profit body, organized under state law. Equally represented on its governing board would be tenants, members of the local community and local property owners.

The HMA would be responsible for providing economical, efficient management and maintenance services on a fee basis for private, low- and moderate-rental housing in neighborhoods where needed. Specifically, the HMA would handle bookkeeping, screen prospective tenants, collect rents, purchase necessary supplies, pay interest, taxes and insurance, and make repairs.

Goodell envisioned certain economies of scale because of the scope of the HMA's neighborhood-wide operation, e.g., employment of full-time maintenance crews and bulk purchases of building materials, fuel and other supplies. It was hoped that these economies would enable the HMA to provide cheaper management and maintenance services than those previously used by local property owners.

Such a program would be difficult to implement. First of all, there may be difficulty in attracting nonprofit or limited-profit groups. The latter may feel that the economic uncertainties and physical danger of managing slum properties far outweigh the limited allowed profit. And although some nonprofit groups may form HMA's, it is problematical whether enough will, in view of the problems of inner city property maintenance.

An even greater impediment would be the HMA's inability to attract enough skilled repairmen due to the already-noted shortage of such workers. Furthermore, the federal expense of subsidizing the HMA plan may prove substantial (95).

Screening and Employing Tenants

Vigorous screening of prospective tenants is one way to prevent maintenance problems (48,49,120). Hiring tenants or local residents to maintain rehabilitated buildings is another possible way to attack maintenance problems because their familiarity with the building and its occupants enable such tenant-managers to deal directly and persuasively with troublemakers. An added psychological edge is that the tenant-worker has an economic stake in the success of the rehabilitation effort.

In practice though beneficial (95), a strategy of screening and employing tenants has sometimes proven both expensive and difficult to implement.

Alleviating Insurance ProblemsSecuring Compliance with the FAIR Administrative Regulations

To correct some of the defects in the FAIR program (180), in 1970 HUD established new administrative regulations. Many problems encountered by rehabilitation sponsors in obtaining insurance could be eliminated if HUD were to put teeth in these regulations by threatening cancellation of federal riot reinsurance of any FAIR plan not complying with them (95).

Problems in Securing Compliance

For the first two years of the FAIR program, HUD provided little supervision, partly owing to a lack of information about such essentials as the number of premiums issued, and the extent of the FAIR losses (179). Present administration regulations have improved this situation somewhat. State FAIR plans are now required to submit quarterly reports to the HUD Insurance Administrator containing such data as the number of residential and commercial properties that were insured, premiums collected and insurance losses if any. Such data should facilitate the HUD Insurance Administrator's determination of whether the state plans are in fact insuring eligible urban properties at rates that are based upon the property's actuarial risk.

But the success of these regulations depends upon the regular submission by state FAIR plans of accurate reports on their insurance activities. They have been accused though by the HUD Insurance Administrator of "distorting their figures" (201) and issuing misleading statements. And another potential obstacle arises from the fact that the state FAIR programs are directly regulated by the existing state insurance regulatory bodies, which have been accused of favoring private insurance companies over the FAIR insurance consumer (180).

Reducing Community OppositionInvolving Neighborhood Leaders and Organizations

A number of rehabilitation projects have successfully involved neighborhood leaders and organizations in the rehabilitation effort (5,38,103). This involvement strategy can go a long way toward reducing community suspicion but at the same time, it creates its own problems. Not only is it difficult to obtain consensus on priorities and policies, but there may be intense factionalism as various community segments vie for leadership (53).

Hiring and Training Local Residents

Also frequently suggested although difficult to implement are the following employment practices: incorporating a job training program in the rehabilitation effort (123) and employing local residents as contractors.

Labor unions, however, have either been indifferent or openly hostile to the employment of local residents on rehabilitation projects (31). In addition to union opposition there is the frequently prohibitive expense of hiring neighborhood labor. Sponsors of multi-family, FHA-insured rehabilitation projects, are required to pay prevailing (union scale) wages; this requirement entails a financial loss to the sponsor if he hires neighborhood workers who often may be unskilled or inexperienced, and therefore unable to match the labor productivity of experienced, union workers (25, 86). And training local residents has often proven difficult because of the practical difficulties of instructing novices on rehabilitation projects (209).

Avoiding RelocationRehabilitating Around the Tenants

Local opposition might be reduced by arranging and scheduling rehabilitation in such a way that tenants could remain in their dwellings, obviating the need to relocate them. However, such a strategy is clearly unfeasible where gutting is scheduled. And even where less ambitious rehabilitation is planned, attempts to rehabilitate around the tenants may be difficult and expensive and may even exacerbate tenant hostility. The difficulties attendant rehabilitating around tenants were graphically noted by the sponsor of one such effort (158).

Work on the building did not commence until December 1963-- more than a year after acquisition. By this time only 16 tenants remained in the building to face what, for them, was a winter of cold discomfort, if not discontent. For example, in February the coal grate under the existing boiler collapsed, leaving the building without heat or hot water and the tenants with some badly frayed nerves. Nerves were further frayed when, instead of replacing the old grate (at a cost of \$600), it was decided to install an entirely new heating system - depriving the tenants of heat and hot water for the next three months.

Having the tenants and their belongings in the apartments during rehabilitation didn't help anyone's nerves, either. Because of the small dimensions of the rooms, furniture could not be moved out of the way of the work in progress and therefore had to be covered with drop cloths. Getting under beds, chairs, and couches to re-finish the floors was time consuming and inefficient. The presence of the furniture also hampered the work of patching and repainting walls and ceilings. . .

During the course of construction, at least eight tenants moved out. Those who remained found plenty to complain about. For example, thinking that the wooden ice boxes in each apartment were part of the original equipment, the contractor had them hauled away. The foundation soon discovered, however, that the ice boxes had been the property of the tenants and that it would have to pay damage claims for misappropriating them. The foundation also had to settle a number of claims for paint stains and other damage to furniture and clothing. . .

Restraints to Forcing, Encouraging or Facilitating Rehabilitation: Conclusion

Scores of strategies have been suggested to either force, encourage or facilitate rehabilitation. While many of these strategies have often proven disappointing, some, e.g. screening tenants and facilitating financing, have often been quite successful. It would be misleading, however, to believe that effecting any one strategy could dramatically reverse the past poor record of rehabilitation because rehabilitation success has often resulted because a number of reinforcing strategies were followed (12,13,95, 103).

Conclusion

Housing rehabilitation in urban areas offers numerous advantages over new construction such as being both cheaper and quicker than redevelopment. Because of these advantages scores of federal, state and local housing programs have been implemented to promote rehabilitation, but despite these programs rehabilitation has often failed.

This failure has resulted because urban housing rehabilitation is a difficult endeavour fraught with uncertainty. Furthermore, many of the strategies that have been proposed to either force, encourage or facilitate rehabilitation have often proven of little utility and even counter-productive.

The blind continuence of past rehabilitation policies and programs will only lead to a proliferation of more housing failures such as in Detroit. What is imperative is for public officials, planners and the public to reexamine past rehabilitation successes and failures and to distill what actions should either be avoided or stressed in the future. We have prepared this bibliography to facilitate this reexamination of housing rehabilitation.

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¹This section primarily lists sources from 1967 to the present. Two excellent previous rehabilitation bibliographies were compiled by William Nash (Residential Rehabilitation, pp. 259-268) and John Heinberg (Bibliography on Residential Rehabilitation).

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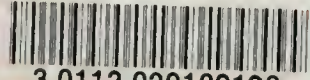
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